

October 12, 2005

ELECTRONICALLY AND BY COURIER

Office of the Secretary
Federal Trade Commission
Room 135-H (Annex Y)
600 Pennsylvania Av. N.W.
Washington, D.C. 20580

Re: Jewelry Guides, Matter No. G711001

To Whom It May Concern:

Karat Platinum LLC ("Karat Platinum") submits the following letter pursuant to the Commission's request for comment on whether the platinum section of the FTC's Guides for the Jewelry, Precious Metals, and Pewter Industries (the "Platinum Guide")¹ should be amended to provide guidance on how to mark or describe products containing between 500 and 850 parts per thousand ("ppt") pure platinum and no other platinum group metals ("PGMs").²

I. Introduction

Karat Platinum is the sole US licensee of an innovative new technology which can be used to produce jewelry composed of 58.5% (585 ppt) platinum and 41.5% (41.5 ppt) cobalt and copper, two non-precious metals, but no other PGMs. This new technology makes it possible to produce, market and sell lower-cost, attractive, readily-available platinum jewelry -- something that previously has not been available to consumers.

Introduction of such products not only will dramatically enhance consumer choice and availability, it will also heighten price and quality competition and could substantially change the competitive nature of the markets involved in the production and sale of platinum jewelry. This will unquestionably result in lower prices, greater variety and more options for consumers. As a result, however, some traditional components of the jewelry industry, fully satisfied with the status quo of limited availability and very high prices, have misused the FTC's Guides to intimidate industry members into believing that jewelry containing the alloy made from Karat Platinum's technology is prohibited.

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Karat Platinum's licensees now are designing, manufacturing and preparing to introduce to the retail market new jewelry products made from this alloy. The identification and marketing of these products will be done in a manner that informs consumers of the composition and relative value of the jewelry as compared to other platinum products (which traditionally contain a higher percentage of platinum), and complies with Section 5 of the FTC Act. For the reasons stated below, Karat Platinum believes that it, and other members of the industry which view the FTC's statements in good faith, already have received sufficient guidance from the FTC as to how they can best avoid consumer confusion and deception in marketing these products to consumers. If, however, the FTC concludes that the Jewelry Guides should be amended, Karat Platinum recommends the inclusion of a new safe-harbor to specifically permit and provide for the marketing of 585 ppt platinum/0 ppt PGM products.

In any case, this evaluation of the Jewelry Guides should not be allowed to become a means of restricting price and product competition, as propounded by those elements of the market seeking to restrict the truthful, non-deceptive marketing of platinum alloy jewelry products.³ Such a result would be contrary to the policy objectives of the Commission, as stated by Chairman Deborah Platt Majoras in a recent speech to the American Bar Association at its 2005 Annual Meeting:

Our recent competition advocacy filings generally have sought to achieve one of three objectives: (1) facilitating entry, (2) eliminating perverse market incentives, and (3) making it easier for consumers to get useful information.... Popular or not, we will continue to advocate against measures that protect incumbents from competition while providing few or no offsetting consumer benefits.⁴

II. Background

Platinum jewelry produced in the United States has traditionally been made from platinum alloys containing 85% or more platinum, with the remainder of the alloy composed of other PGMs such as palladium, ruthenium or iridium, or other non-precious metals such as copper or cobalt.⁵ Although all PGMs are rare, they have dramatically different costs. For example iridium, publicly traded at approximately \$175 per ounce, is 7% as expensive as rhodium, which is traded at approximately \$2,050 per ounce.⁶ The rising price of platinum and other PGMs, and the rising demand for platinum jewelry, have led several producers to try to develop an acceptable platinum alloy containing less than 85% platinum. Since the price of most other PGMs has risen along with the price of platinum, producers have also sought to develop platinum alloys with little or no PGMs besides platinum.

After a substantial investment of time and resources, a jewelry-grade platinum alloy (the "Alloy") was recently developed containing 58.5% platinum and no other PGMs (the remaining 41.5% of the alloy is composed of cobalt and copper). The Alloy is not only less expensive than traditional platinum alloys, but also it can be used to produce quality jewelry which is superior in several respects.

A. Comparative Testing Analysis

A comparative analysis performed by a leading testing facility – the Jewelry Institute of Pforzheim University – shows that the Alloy is harder, stronger and more castable than traditional platinum alloys containing 950 ppt platinum, as well as alloys containing 585 ppt platinum and 415 ppt

palladium.⁷ Based on this analysis, the testing facility concluded that the alloy is “suitable material for the manufacture of jewelry articles such as rings, bracelets or necklaces.”⁸ The Jewelry Institute’s study further found that jewelers could easily work with the Alloy “using advanced, but well-known industrial manufacturing techniques such as extruding, soldering, etc.”⁹ The comparative analysis also found that the corrosive quality of the new Alloy, which is an indicator of the amount of metal which reacts with or is released onto a consumer’s skin, is equivalent to other platinum alloys.¹⁰

B. Industry Opposition

Karat Platinum is the exclusive licensee in the United States of the Alloy. Jewelry created from this Alloy provides to consumers, for the first time, the ability to choose lower-cost, attractive, readily-available platinum jewelry of very high quality. It could open up the market for platinum jewelry products to an entirely new population of consumers, previously intimidated by the high prices of more “traditional” platinum jewelry.¹¹ This could not only have a significant impact on price and product competition in the retail jewelry market, but it could also unsettle the very profitable distribution, production and sale of platinum jewelry as those industries now exist around the world. This could include the profitability of the South African platinum mining industry – an oligopoly of three companies which together account for roughly three-quarters of the world’s platinum production and control a substantial portion of the world’s PGM production.¹² According to one company “mak[ing] [585] platinum more affordable to a much broader spectrum of the population” may “cannibalise the high purity segment” of the market.¹³

As a result, traditional industry trade associations, and some of their members, sought to block Karat Platinum’s initial attempt to market jewelry created from the alloy, by making categorically false statements, circulated throughout the jewelry industry and to consumers, that 585 platinum jewelry containing no additional PGMs was illegal under the Platinum Guide. For example, one prominent trade association sent a message to a large segment of the jewelry industry stating that “according to the [Jewelry] Guides . . . for a product to be called platinum there must be a minimum of 500 ppt pure platinum. The remainder (450ppt) must be ONLY platinum group metals.”¹⁴ The President of another prominent industry trade association stated that an “FTC ruling” states “that platinum below 950 parts per thousand has to be alloyed with one or more platinum group metals.”¹⁵

C. Prior FTC Action

In order to remedy the market barriers created by these false, allegedly authoritative declarations, Karat Platinum requested that the FTC staff issue a letter making clear to the industry that the Platinum Guide did not prohibit the marketing of 585 platinum alloys which contain no additional PGMs because it did not address jewelry made from these 585 platinum alloys (or similar products).¹⁶ This is because such alloys were not considered technologically feasible at the time the Platinum Guide was last revised. As the Federal Register Notice seeking comment on the Jewelry Guides describes, the staff responded to this request by soliciting input from various industry groups, including those industry groups which had made statements that the Platinum Guide prohibited 585 platinum alloys with no PGMs. On February 2, 2005, the staff responded to Karat Platinum’s request with a letter stating that “in our opinion, a literal reading of the Guides indicates that they do not address the marketing of the Karat Platinum alloy, except to the extent that they require a minimum of 500 ppt pure platinum.”¹⁷ The staff made clear that 585 platinum alloys containing no PGMs could be sold, and that the marketing of such alloys “would be subject to section 23.1 of the Guides, which contains a general prohibition on deception, as well as Section 5 of the FTC Act.”¹⁸ The staff also indicated that jewelry made from such alloys should be marketed in such a way as to fully disclose

their composition. Thus, although Karat Platinum had suggested that it might be sufficient under the Guides to state that the alloy was composed of 585 platinum and 0 PGM,¹⁹ the staff responded that such a disclosure was not sufficient.²⁰ The staff explained that the alloy was “sufficiently different in composition from products consisting of platinum combined with other PGM as to require clear and conspicuous disclosure of the differences.”²¹ Accordingly, as discussed in section III(B) below, Karat Platinum has decided to describe jewelry made from the alloy as “585Pt.415Co.Cu.,” and to provide in its marketing materials further explanation of the features of the alloy as compared to traditional platinum products.

D. Industry Confusion

Despite the staff opinion letter which dispels any suggestion that the marketing of 585 platinum is illegal, certain industry members have continued to imply that uncertainty exists as to the legality of selling a 585 platinum product that is not “safe-harbored” under the Guides. For instance, one prominent trade association continues to publish a handbook to retailers falsely implying that the Platinum Guide’s safe-harbors are mandatory requirements from which companies may not stray.²² Karat Platinum believes that other industry members are emphasizing that the staff letter’s statement that “the Guides neither allow nor prohibit the marketing of the Karat Platinum alloy” indicates that the FTC does not believe that the alloy is “allowed.”²³ These false representations continue to spread uncertainty throughout the retail market.

III. The Platinum Guide Does Not Require Amendment To Address with Particularity Products that Contain 500-850 ppt Pure Platinum and No Other PGMs.

A. FTC Guidance is Sufficient

The staff letter has provided manufacturers and sellers of 500-850 ppt pure platinum jewelry with guidance that, if followed, would ensure that consumers are not deceived. Although the current Platinum Guide does not address such alloys specifically, it does offer simple and clear guidelines for informing consumers about the differences between platinum products. According to the Platinum Guide, it is “unfair or deceptive” to use the term “platinum” as part of a product’s marketing if that marketing “misrepresents the *product’s true composition*.”²⁴ According to the comments to the Guide, an “informative marking or description” that represents a product’s true composition is one that “will put consumers on notice that the product contains certain precious metals, thereby putting them in a position to inquire of the jeweler as to the relative value of the different metals and the overall value of the product.”²⁵ Based upon the guidance of the staff letter and the Platinum Guide, the best method for disclosing the difference between the new 585 platinum 0 pgm alloy and traditional platinum alloys is to describe to consumers the total composition of the new Alloy. As the Guide intends, any consumer who remains uncertain as to the relative values of jewelry made from the Alloy or other platinum jewelry can and should consult his or her jeweler.

The Guide offers several examples of “safe-harbor” practices which provide guidance as to the form in which manufacturers should convey the composition of 585 alloys.²⁶ First, the Guide indicates that manufacturers can use the scientific abbreviations for metals when describing to consumers the composition of a particular alloy.²⁷ Second, the Guide indicates that the concentration of constituent metals should be conveyed in parts per thousand directly preceding the metals’ abbreviation (e.g. “550Pt.350Pd.50Ir.”).²⁸

B. Karat Platinum's Marketing Will Inform Consumers

Based upon the staff letter and the Platinum Guide, Karat Platinum has marked its jewelry composed of 585 platinum and 415 cobalt and copper as "585Pt.415Co.Cu."²⁹ Karat Platinum believes that this marking fully discloses to consumers the composition of the product they intend to buy, and informs consumers of the difference between Karat Platinum's product and other 585 platinum products which contain additional PGMs.³⁰ In order to highlight the difference between Karat Platinum's 585 platinum product and traditional platinum products, Karat Platinum's marketing materials describe the Alloy as a new, lower cost form of platinum, and include a full description of its composition: 58.5% Platinum 41.5% Copper/Cobalt (non-precious metals).³¹

C. Commission Should Reiterate that Any Company May Market Platinum Jewelry Consistent with Section 5 of the FTC Act

As is described above, despite the guidance provided by the staff regarding the proper marketing of Karat Platinum's product, and the Commission's pronouncement that a company may market a 585 platinum alloy so long as that marketing is consistent with Section 23.1 of the Guide and Section 5 of the FTC Act, certain industry organizations have spread confusion throughout the industry by implying that a product which is not expressly allowed by the Guide is, in fact, illegal. Karat Platinum requests that the Commission, in any future remarks regarding the Guide, make unequivocally clear that *it is entirely legal for a company to sell 585 platinum products which contain no additional PGMs*, and that such products, like all products, may be marketed in any way that does not violate Section 5 of the FTC Act.

IV. If the FTC Concludes that an Amendment to the Guides is Warranted, a New Safe-harbor Provision Is Appropriate

A. Proposed Safe-harbor

Although Karat Platinum believes that the existing Platinum Guide, the staff letter, and the Commission's Federal Register statements explaining the Platinum Guide, provide sufficient guidance as to how to truthfully and non-deceptively mark and describe 585 platinum products that contain no other PGMs, should the Commission determine that there is a need to provide the industry with specific guidance, Karat Platinum proposes the addition of the following safe-harbor provision to Section 7(c)(4) of the Platinum Guide:

"An industry product consisting of at least 500 parts per thousand pure Platinum and consisting of no additional platinum group metals, may be marked 'Platinum,' provided that the Platinum marking is preceded by a number indicating the amount in parts per thousand of pure Platinum, and provided that the total amount of non-precious metals contained in the composition is identified in parts per thousand. Non precious metals may be identified using the scientific symbol by which they are identified in the periodic table of the elements. Thus the following marking may be used: "585Pt.415Co.Cu."

The proposed safe-harbor gives consumers full, complete, and accurate information. By informing consumers as to what metals form the non-platinum component of the alloy, the proposed safe-harbor ensures that consumers will understand that the non-platinum component does not include PGMs or any other precious metal. As is described above, the proposed safe-harbor mirrors the safe-harbors currently contained within the Platinum Guide. Specifically, the proposed safe-

harbor adopts the Platinum Guide's current convention of representing metals by their universally recognized scientific symbol, and of representing the quantity of metals in terms of parts per thousand immediately preceding the metals' symbol.

B. Safe-harbor Would Provide Clear Guidance to Consumers and Industry Members and Promote Informed Consumer Choice

As stated above, the FTC's Platinum Guide makes clear that the marketing of all jewelry made from platinum should (1) place consumers on notice that the jewelry contains certain precious metals and (2) provide consumers with enough information to inquire of a jeweler as to the relative value of the different metals and the overall value of the jewelry.³²

The proposed safe-harbor is consistent with this policy objective.

The safe-harbor would further assure businesses and consumers that 585 platinum products are legal by affirmatively recognizing their marketing. Specifically the safe-harbor would dispel the suggestion, which continues to disrupt the market, that 585 platinum alloys may not be marketed because such marketing is not included in a safe-harbor.

Some comments submitted to the FTC have suggested, based on industry funded surveys, that consumers expect platinum jewelry products to be composed of only *pure* platinum³³ and the promotion of jewelry products composed of between 500 and 850 parts per thousand platinum with no additional PGMs will cause "significant consumer confusion."³⁴ These comments advocate forbidding manufacturers of 500 to 850 parts per thousand platinum products from conveying to consumers, in any way, the platinum content of their products.³⁵

The Supreme Court has specifically rejected the oxymoron of protecting consumers by "completely suppress[ing] the dissemination of concededly truthful information about entirely lawful activity" as an unconstitutional violation of commercial free speech.³⁶ The Court has wisely held that consumer "protection" should not be premised upon creating "public ignorance."³⁷ As a result, to the extent that consumers assume products on the market contain certain percentages of platinum, complete and accurate disclosure is imperative. For a number of years, the Commission has advanced a similar concept that consumers are benefited by, and can understand, non-deceptive statements of products' contents, and that fuller disclosure is highly preferable to suppression of disclosure.³⁸

The supposition that consumers are incapable of understanding and appreciating the difference between high platinum content and lower platinum content products directly contradicts the publications of the some of the same special interest groups which advocate limiting information. For instance, Platinum Guild International reports on their website that according to a focus group of shoppers for engagement rings shoppers want to be educated about the differences in purity between different types of platinum jewelry: "Educate me, don't market."³⁹ Indeed, PGI concludes that "men *are interested in the scientific and technological information about platinum*" and "some men have concerns about different levels of platinum's purity (900 v. 950) and whether their selection is the purest kind."⁴⁰ These statements indicate that a large segment of consumers do not have preconceived notions about what types of products are available, and, instead *are interested in receiving information about their platinum options*, and question the purity of products they currently consider.

Furthermore, experience, and the market, indicate that consumers are, in fact, used to choosing between jewelry products which contain pure precious metals, and jewelry products which contain portions of precious metals combined with portions of non-precious metals. For instance,

when purchasing gold jewelry consumers often choose between 14K (583 ppt), and 18K (750 ppt) products. Consumers understand that when purchasing a lower quantity gold product, such as 14K gold, the gold may either be alloyed with other precious metals such as silver, palladium, or platinum, or with non-precious metals such as nickel, zinc or copper.⁴¹ As the market for gold illustrates, consumers constantly make the choice between purchasing “pure” jewelry, and purchasing jewelry alloys containing precious and non-precious metals. The key to making such choices is the provision of complete, truthful, and accurate information concerning the composition of different products.⁴² There is no reason to expect that consumers accustomed to selection in the gold (and other precious metals) market will be misled, confused, or deceived by the introduction of selection in the platinum market.⁴³

Karat Platinum further notes that to the extent that retailers and trade associations are characterizing traditional platinum alloys as “pure” platinum such that consumers are being led to believe that they are purchasing a product actually composed of pure platinum, such industry members are actively violating the Platinum Guide, and the FTC Act’s prohibition on deceptive and misleading advertising. As the current Platinum Guide recognizes, platinum alloys, containing significantly different amounts of platinum and other metals, are marketed and marked to consumers. Traditional platinum alloys include options such as 950 ppt platinum, 850 platinum combined with precious and/or non-precious metals, and 500-850 ppt platinum combined with platinum group metals that have dramatically varying values. None of these alloys are *pure* platinum, and many of these alloys are substantially less valuable than pure platinum. For instance, an 850 platinum product may be composed of 150 ppt base metals and is therefore worth approximately 15% less than an identical pure platinum product. Similarly platinum products containing 100% PGMs may be worth significantly less than pure platinum. For instance, a 900 ppt platinum product combined with 100 ppt iridium contains 10% of a metal which is worth *substantially* less than platinum (platinum is more than 500% more valuable than iridium).⁴⁴ As a result any industry member marketing or advertising their product as being composed of pure platinum is “misrepresent[ing] the product’s true composition” in clear violation of the Platinum Guide.⁴⁵

V. THERE IS NO INTERNATIONAL STANDARD THAT ADDRESSES PRODUCTS CONTAINING 585 PPT PLATINUM AND NO OTHER PGMs.

As has been previously described, Karat Platinum’s alloy is the first 500 – 800 ppt platinum product that contains no additional PGMs (and to Karat Platinum’s knowledge the only such product). Karat Platinum is, at this time, engaged only in domestic sales. As a result, no foreign jurisdictions have had occasion to address the marking or marketing of such product.

Karat Platinum notes that several comments have advocated that “international standards should be consistent with our domestic standards.”⁴⁶ Although Karat Platinum has done no independent research into the laws and regulations of foreign countries, according to Platinum Guild International there are no consistent international standards regarding platinum.⁴⁷ Furthermore, Karat Platinum notes that the Commission considered the voluntary standard published by the International Organization for Standardization when it last revised the Platinum Guide, and purposefully decided to deviate from that standard in several respects.⁴⁸

VI. CONCLUSION

Technology and innovation have brought a new product to consumers in the platinum market. The FTC’s existing Guides and staff letters provide clear guidance regarding how to advertise this

product, i.e., provide complete, accurate, and truthful information to consumers. Just as consumers go to a gas station and choose between 87, 89, or 92 octane gasoline, consumers at jewelry stores choose between different disclosed purities of platinum jewelry (e.g. 900Pt; 850Pt 100Ir, 585Pt 415Co.Cu). The only true cause for concern in this market is the inference of some industry members that consumers should be denied the choice; or that consumers should be denied the information needed to make the choice.

Karat Platinum appreciates the Commission's efforts to determine whether additional guidance regarding the marketing of alternative platinum alloys is in the public interest, and would be pleased to provide any further information upon request.

Sincerely,

END NOTES

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- ¹ The Platinum section of the Jewelry Guides may be found at 16 C.F.R. § 23.7.
- ² Comments to Guides for the Jewelry, Precious Metals, and Pewter Industries, 70 Fed. Reg. 38834, 38837 (July 6, 2005). This letter addresses each of the topics for which the Commission seeks comment, with the exception of the advisability of an amendment to address platinum-clad and similar products.
- ³ Karat Platinum notes that this is not the first occasion in which established members of the platinum industry have attempted to restrict the entrance of competition by asking the FTC to restrict the non-deceptive marketing of competitive platinum alloys. Indeed during the last revision of the platinum guide the innovator of a 585Pt.375Pl.4Rd alloy, a subsidiary of Alexander Primak Jewelry, Inc., complained that two organizations – Platinum Guild International and Johnson Matthey – “engaged in a campaign to restrict usage of the [585Pt.375Pl.4Rd.] alloy” and “petitioned [the FTC] to come up with recommendations to effectively disallow metals with platinum content below 85% in jewelry production.” Comment G711001-BL0052300374 (July 17, 1996). According to Primak Jewelry, “while PGI purportedly takes this position in the interest of ‘purity,’ we believe this position was taken in the interest of restricting competition, maintaining the South African monopoly, and reaping profits from artificially maintained prices for platinum.” Comment G711001-B20052300805 (Oct. 25, 1996). Primak concluded that one “cannot seriously claim that the sale of properly marked lower-content platinum jewelry is a deceptive or unfair practice.” *Id.* Ironically, now that 585 platinum 415 PGM jewelry has been safe-harbored under the guides Alexander Primak has joined hands with those organizations interested in restricting competition from new entrants. In their recent comment to the Commission they stated that “use of the term ‘platinum’ should be deemed to be unfair and deceptive if used to describe jewelry products containing 500-850 ppt pure platinum and no other PGM,” and ask the Commission to “protect the US marketplace” from Karat Platinum’s product which it describes as “developed in Europe.” Comment 517683-00037 (Aug. 26, 2005).
- ⁴ *REFLECTIONS ON MY FIRST YEAR*, Deborah Platt Majoras, Chairman, Federal Trade Commission, 2005 ABA ANNUAL MEETING Chicago, Illinois (August 6, 2005), available at: <http://www.ftc.gov/speeches/majoras/050806abamtg.pdf>.
- ⁵ The “platinum group metals” include platinum, iridium, osmium, palladium, ruthenium, and rhodium. 16 C.F.R. § 23.7(a). These six metals are located in close proximity on the periodic table of the elements. *See* <http://www.webelements.com> (last viewed August 29, 2005).
- ⁶ http://www.platinum.matthey.com/user_index.html (last viewed August 26, 2005).
- ⁷ Testing was done by the Jewelry Technology Institute of Pforzheim University in Germany and has been attached as Exhibit A. Pforzheim University performed the comparison test against a commercially available platinum-copper alloy (95% platinum and 5% copper) and a platinum-palladium alloy (58.5% platinum).
- ⁸ *Id.* (Exhibit A).
- ⁹ *Id.* (Exhibit A).
- ¹⁰ The alloy is also nickel free – the common standard used in the jewelry and watch industry for describing a product as “hypoallergenic.” *See, e.g.,* <http://www.watchhookup.com/glossary.htm> (last viewed Sept. 8, 2005); <http://www.webjeweller.com/main/glossary.shtml> (last viewed Sept 8, 2005). *See also*, J. Vilaplana and C. Romaguera, “New Developments in Jewellery and Dental Materials” 39 Contact Dermatitis 55-57 (1998) (stating that words such as “hypoallergic” are used by manufacturers to describe “problem[s] caused by nickel, though they do not yet take into account other sensitizing metals . . .”)

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- 11 Other comments recognize that consumers have been priced out of the traditional platinum market, but they prefer this exclusion as a way to make “a clear distinction between high-end jewelry, and low-end jewelry/cheap stuff” and conclude that consumers who can not afford 950 platinum should simply “buy white gold.” Comment Number 517683-00029 (Aug. 22, 2005).
- 12 U.S. Geological Survey Minerals Yearbook, Platinum-Group Metals § 57.4(2003). Three South African companies – Anglo American Platinum, Impala Platinum, and Lonmin – control and fund a marketing arm called Platinum Guild International (“PGI”), a trade association which published several false statements. *See, e.g., infra* note 15. PGI sits on the board of the Jewelers Vigilance Committee, another trade association responsible for publishing several false statements. *See, e.g., infra* note 14.
- 13 2005 Implats Annual Report, *Market Review* 51, available at http://www.implats.co.za/annual_report/2005/pdf/market_review.pdf (last viewed October 12, 2005).
- 14 Jewelers Vigilance Committee, *It's a Family Affair* (2004).
- 15 Huw H. Daniel, President PGI-USA, *Platinum Purity, To Love and Protect*, 1 Platinum Opportunity 2 (2004).
- 16 *See* FTC Notice: “The FTC staff opinion concludes that the Guides do not specifically address the marketing of such an alloy. 70 Fed. Reg. 38834 at 38835 (July 6, 2005).
- 17 Guides for the Jewelry Precious Metals, and Pewter Industries, 70 Fed. Reg. 38836 (July 6, 2005).
- 18 *Id.*
- 19 Letter from Jodie Z. Bernstein, Bryan Cave, to Lydia Parnes, Acting Director, Bureau of Consumer Protection of 12/15/04, available at <http://www.ftc.gov/os/statutes/jewelry/letters/karatplatinum.pdf>
- 20 *Supra*, note 16.
- 21 *Id.*
- 22 According to the “Retailer’s Legal Handbook: JVC’s Guide for the Retail Jewelry Store Owner” although the Jewelry Guides “say Guidelines in their title . . . they are enforceable by the FTC” and as a result the Guides are “not a request” but a “requirement.” Jewelers Vigilance Committee, *Retailer’s Legal Handbook: JVC’s Guide for the Retail Jewelry Store Owner*, 7. The handbook goes on to describe the safe-harbor provisions codified at 23.7 as rules which “must” be followed, in effect stating that any claims – regardless of whether they are otherwise truthful and not deceptive – which do not adhere strictly to the “safe harbors” are illegal. For instance, 23.7(c)(4) is characterized in the handbook in the following manner: “If you have an object that is made up of at least 500 parts platinum and the rest consists of platinum group metals, *you must* identify the number of parts per thousand of the other platinum group metals, as in 600pt350Ir or 550plat200pal.250ir.” *Id.* at 22. Similarly, the JVC website states that “Items containing less than 85% platinum must detail the platinum group metal.” *See* http://www.jvclegal.org/c_buyerschecklist.html (last viewed August 29, 2005). This interpretation of the Guides presumes that the Guides permit platinum to be alloyed only with other PGMs when, in fact, the Commission did not address the issue of non-PGM alloy platinum. Even after the issuance of the staff letter, JVC has refused Karat Platinum’s request that these false representations be removed and corrected.
- 23 Letter from Lydia Parnes, Acting Director, Bureau of Consumer Protection to Jodie Z. Bernstein, Bryan Cave, of 2/2/05, available at <http://www.ftc.gov/os/statutes/jewelry/letters/karatplatinum002.pdf>.
- 24 16 C.F.R. 23.7(a) (2004) (emphasis added).

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- 25 Guides for the Jewelry, Precious Metals, and Pewter Industries, 62 Fed. Reg. 16,673, 16,674 (Apr. 8, 1997).
- 26 The Guide makes clear that this is not an exclusive list by describing these practices as only “*examples*” of marketing “not considered unfair or deceptive.” 16 C.F.R. § 23.7(c) (emphasis added). Furthermore, the FTC’s comments to the Guide which are published in the Federal Register clearly state that these “examples” are merely “safe harbor provisions,” not a list of requirements, much less an exhaustive one. Guides for the Jewelry, Precious Metals, and Pewter Industries, 62 Fed. Reg. 16,670, 16,672 (Apr. 8, 1997).
- 27 The Guide specifically safe-harbors the practice of representing “platinum” as “Pt,” “Iridium” as “Ir,” “Palladium” as “Pd,” “Ruthenium” as “Ru,” “Rhodium” as “Rh” and “Osmium” as “Os.” 16 C.F.R. 23.7(c)(1). The Commission has commented that although some “consumers with no knowledge of chemistry” might not be able to understand “the two letter abbreviations . . . listed in the periodic chart of the elements” the “use of two-letter abbreviations . . . would not be objectionable.” 61 Fed. Reg. 27225 (May 30, 1996). As the Commission envisioned, such markings are clearly sufficient to “put consumers on notice that the product contains certain precious metals, thereby putting them in a position to inquire of the jeweler as to the relative value of the different metals and the overall value of the product.” 62 Fed. Reg. 16673 (Apr. 8, 1997).
- 28 *See, e.g.*, 16 C.F.R. 23.7(c)(4).
- 29 Karat Platinum notes that some comments submitted to the FTC base their opinion upon the presumption that companies selling 585 platinum products intend to market to consumers 585 products simply as “Platinum” without “informing [consumers] that it is not all platinum.” Comment No. 517683-00019 (Aug. 17, 2005). As is explained in this Comment, and can be seen by Karat Platinum’s marking and marketing, Karat Platinum fully discloses to consumers the nature and composition of all of its products. It is only through such full disclosure that consumers can exercise their ability to choose the product that best fits their preferences.
- 30 Jewelers will readily understand “Co” and “Cu” as universal symbols for two metals commonly alloyed to platinum, and other precious metals such as gold.
- 31 In response to the Commission’s particular interest in how this disclosure compares to the disclosure required for jewelry containing approximately 585 ppt gold (14K gold), Karat Platinum notes that in the gold industry consumers are not informed about the composition of the non-gold component of the jewelry product. 16 C.F.R. 23.4(c)(1). Karat Platinum’s disclosure provides far greater information to consumers purchasing 585 platinum than to consumers purchasing 585 gold.
- 32 Guides for the Jewelry, Precious Metals, and Pewter Industries, 62 Fed. Reg. 16,673, 16,674 (Apr. 8, 1997).
- 33 *See, e.g.*, Comment Number 517683-00033 (Aug. 24, 2005); Comment Number 517683-0035 (Aug. 24, 2005) (stating “platinum has long been thought of as pure”). Some comments have cited a consumer perception survey “sponsored by Platinum Guild International” and a study conducted by “Hall & Partners in 2003,” which Karat Platinum understands, based on an inquiry to Hall & Partners, was also sponsored by Platinum Guild International. Comment Number 517683-00010 (Aug. 15, 2005). Karat Platinum has been unable to obtain a full copy of the studies, or an explanation as to how the studies were conducted. As a result, an analysis of the relevance of any conclusions these studies draw is impossible. In the event that PGI chooses to release the full text of these studies, Karat Platinum may submit an additional comment directly addressing the studies’ findings.
- 34 *See, e.g.*, Comment Number 517683-00006 (Aug. 9, 2005); Comment Number 517683-00004 (Aug. 6, 2005).
- 35 *See, e.g.*, Comment Number 517683-00003 (July 28, 2005) (stating belief that “the FTC should not be including this new product under the premium umbrella of a platinum marked product”); Comment Number 517683-00006 (Aug. 9, 2005) (stating that FTC should “prohibit the use of the word ‘platinum’” to such products); Comment Number 517683-00032 (Aug. 23, 2005) (stating non-PGM products should not “reference the word ‘platinum’ in any form”); Comment Number 517683-00037 (Aug. 26, 2005) (“What is necessary is to prohibit these inferior products from being called PLATINUM”).

- 36 *Virginia State Bd. Of Pharmacy v. Va. Citizens Consumer Council*, 425 U.S. 748, 773 (1976).
- 37 *Id.* See also FTC Comments to FDA Regarding First Amendment Issues, 7 (Sept. 13, 2002) citing *Thompson v. W. States Med. Ctr.*, 535 U.S. 357, 374 (2002) (conceding that the “government does not have a substantial interest in ‘preventing the dissemination of truthful commercial information in order to prevent members of the public from making bad decisions with the information’”).
- 38 See, e.g., Comments of the Staff of the Bureau of Consumer Protection, the Bureau of Economics and the Office of Policy Planning of the Federal Trade Commission, In the Matter of Request for Comments on Nutrient, Content Claims, Dkt. 1994P-0390, 1995P-0241, Food and Drug Administration, 7-8 (July 27, 2004).
- 39 <http://www.platinumguild.com/output/page22.asp> (last viewed Aug. 29, 2005).
- 40 <http://www.platinumguild.com/output/page22.asp> (last viewed Aug. 29, 2005).
- 41 See <http://jewelrymaking.allinfoabout.com/features/goldalloys.html> (last viewed Aug. 29, 2005).
- 42 To the extent that consumers do not currently perceive that they have the option of purchasing 500-850 ppt platinum jewelry which contains no additional PGMs, that perception is due solely to the historical inability of manufacturers to produce such an alloy (and the inaccurate statements of certain trade associations as to the meaning and substance of the Jewelry Guides). As has been described above, before the Karat Platinum alloy it had been technologically infeasible to produce a jewelry grade platinum alloy with between 500 to 800 ppt platinum and no other platinum group metals. As with the introduction of *any new product* which is truthfully and accurately labeled, consumers will perceive the existence of a choice, and will make purchasing decisions based on their personal preferences. Marking and describing this new platinum alloy to disclose the entire composition of the product ensures that consumers will have the information at hand to distinguish this from other platinum products.
- 43 Some comments have alleged that platinum products containing less than 850 ppt PGMs will make “comparison shopping much more difficult” and have a “huge potential for miscommunication and misunderstanding.” These comments do not offer, either through empirical evidence or through logical argument, any reason to believe that consumers would be misled by Karat Platinum’s marketing as to the true composition of the Karat Platinum alloy. The only explanation is that these comments infer that greater selection itself will cause consumers difficulty by giving them more options when comparison shopping, and the existence of greater selection may create the potential for miscommunication. See Comment Number 517683-00035 (Aug. 24, 2005); 517683-00033 (Aug. 24, 2005).
- 44 http://www.platinum.matthey.com/user_index.html (last viewed August 29, 2005) (pricing platinum at \$906/oz and iridium at \$175/oz).
- 45 16 C.F.R. 23.7(a).
- 46 See, e.g., Comment Number 517683-00006 (Aug. 9, 2005); Comment Number 517683-00003 (July 28, 2005). At least one comment has also noted that “different states” within this country “have different minimum platinum content requirements.” Comment Number 517683-00003 (July 28, 2005). Karat Platinum is aware of only a few states with outdated legislation purporting to govern the marking and marketing of platinum jewelry. Ca. Bus. & Prof. Code § 22128(f); 815 Il. Comp. Stat. 395/5(6); N.J. Stat. Ann. § 51:6-5(f); N.Y. Gen. Bus. L. § 234(f). These statutes, passed in the 1920’s, purport to make it a misdemeanor to mark any jewelry containing platinum with the word “platinum” (or an abbreviation of the word platinum) unless *a total of 985 parts per thousand of the article consist of either platinum, iridium, palladium, ruthenium, rhodium, or osmium*. See, e.g., Cal. Bus. & Prof. Code § 22128 (allowing a slight tolerance where products have been soldered). In addition to these compositional requirements, the statutes require that jewelry be stamped with the word “platinum” or with the abbreviation “plat.” and forbids any other words or letters for representing platinum quality including “Pt.” Cal. Bus. & Prof. Code § 22129.

To our knowledge these laws have only been enforced once, in 1927. *People v. Suderov*, 219 A.D. 555 (N.Y. App. Div. 1927). It is further clear that they would be void if enforced today as inconsistent with the FTC’s Platinum

Guide, and with the Supreme Court's subsequent decision in *Virginia State Bd. Of Pharmacy*. For instance, the state laws would make it illegal to sell, despite any amount of disclosure, jewelry composed of 950 ppt platinum and 50 ppt cobalt, as platinum, whereas the Platinum Guide safe-harbors the practice of marking and advertising such a product as simply "pt" or "platinum." Indeed, if these laws were still valid, a large portion of the current platinum industry would be in violation. See, e.g., <http://www.johnsonmattheyny.com/products-platinumalloys.html> (last viewed Aug. 29, 2005) (advertising the sale of 95.2% Pt / 4.8% Co platinum alloy – an alloy falling below the states' 985 ppt PGM requirement).

⁴⁷ BJ Williams, *Are Lower Cost Platinum Alloys Feasible*, (PGI USA 2002) (describing standards used in various countries). Although the article indicates that different countries endorse different regulatory schemes, the article misrepresents the regulatory scheme within the United States by stating that all platinum alloys "must also have at least 950 ppt of PGM and that all the PGM and their purity levels must be marked on the jewelry." As a result, we caution the Commission from relying on the article's specific representations as to the rules and regulations of foreign jurisdictions. Other Comments, however, have indicated that the "rules, and their enforcement, vary from country to country." Comment Number 517683-00037 (Aug. 26, 2005).

⁴⁸ Comments to Guides for the Jewelry, Precious Metals, and Pewter Industries, 62 Fed. Reg. 16669, et seq. (April 8, 1997).

Exhibit A

Physikalische Eigenschaften
von Legierungen

April 30, 2004

We made comparative measurements with a conventional 685 PtPd alloy and the 585 Pt non PGM alloy. It is very obvious the reference 685 PtPd alloy has significant lower hardness and tensile strength values. We also ran a corrosion test which was performed for 4 days in an environment of synthetic sweat and salt water at 50° C in saturated humidity. Both alloys passed this test without any colorations or stains.

An alloy of the composition as specified in the following table was weighted and molten by the company which developed the alloy under vacuum in a zirconia crucible in a vacuum induction furnace at a temperature of 1480° to 1500° C to obtain a homogeneous melt. The alloy was cast into a water-cooled copper mold to form blocks having a dimension of 20 x 143 mm. After a reduction of 75% through a cold rolling process the alloy was annealed with 950°C under a nitrogen atmosphere.

In the following table, the physical properties of the alloy specimens thus formed are specified. The melting range was determined by measuring the cooling curve of the alloy with a Degussa resistance furnace HR1/Pt/PtRh10 equipped with a Linseis thermo element and a temperature-time-plotter L250. The Vickers hardness was determined according to EN ISO 14577 using a Wolpert V-Testor 4521 and a Shimadzu HMV-2000 hardness testing instrument. The tensile strength, elongation at break and yield stress were determined according to EN 10002 using a Zwick ZD10 instrument. The color was determined visually.

COMPARISON EXAMPLE

A commercially available PtCu 950/50 alloy was weighted and molten in a similar way under vacuum in a zirconia crucible in a vacuum induction furnace to obtain a homogeneous melt. The alloy was cast into a water-cooled copper mold to form blocks having a dimension of 40 x 114 mm. After a reduction to 20 mm through a cold rolling process the alloy was annealed with 950°C 50 minutes under a nitrogen atmosphere. The next deformation steps were 8mm, 2,5mm, 1,0mm. Between the steps the material was annealed by 950°C.

The physical properties of the alloy specimens thus formed were tested as described above and are specified in the following table.

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Tiefenbrunnstr. 65
Anschluss:
Pforzheimer Sparkasse

April 30, 2004

The experiment results indicate that the alloy according to the present invention exhibits superior casting, wear and abrasion and polishing properties when compared to a conventional *PtCu 950/50* alloy. Furthermore, the experimental results indicate that the forming properties and the color tone of the alloy according to the present invention are comparable to those of a conventional *PtCu 950/50* alloy. The alloy according to the present invention was found to be a suitable material for the manufacture of jewelry articles such as rings, bracelets or necklaces by applying the know how about alloys with elevated hardness. The working characteristics of the alloy of the invention are such that these articles of jewelry can be made using advanced, but well-known industrial manufacturing techniques such as extruding, soldering, etc.

Sincerely,

Prof. Dr. Wolfgang Böhm
Schmucktechnologisches Institut
Hochschule Pforzheim

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Standort:
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Bankverbindung:
Pforzheimer Sparkasse
BLZ 66650085
Kto 871400

COMPOSITION	585/Pt non PGM	Pt 950/CU50	585/PtPd ALLOY
DENSITY (g/ccm)	13,8	20,8	16,2
COLOR	Platinum White	Platinum White	Platinum White
MELTING RANGE (°C)	1360-1410	1730-1745	1670-1685
CASTABILITY	Excellent	Fair	Fair
HARDNESS			
SOFTENED STATE	170	110	76
20% COLD ROLLED	260	185	105
40% COLD ROLLED	285	210	160
60% COLD ROLLED	300	235	185
TENSILE STRENGTH [N/mm²]			
SOFTENED STATE	650	320	280
60% COLD ROLLED	~1000	~800	~650
YIELD STRESS [N/mm²]			
	350	130	95
ELONGATION AT BREAK [%]			
	>30%	>30%	>45%
CORROSION TEST			
	passed	passed	passed
POLISHING			
	excellent	fair	fair

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